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Conference

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

New York, N.Y.

4 v.

13 CR 626 (RMB)

5 ANTONIO OLMEDA,

6 Defendant.

7 -----x

8  
9 September 3, 2013  
12:40 p.m.

10 Before:

11 HON. RICHARD M. BERMAN,

12 District Judge

13  
14 APPEARANCES

15 PREET BHARARA

16 United States Attorney for the  
Southern District of New York

17 BY: MICHAEL MAIMIN

JOHN CRONAN

Assistant United States Attorneys

18 NANCY ENNIS

19 Attorney for Defendant

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1 THE DEPUTY CLERK: Please rise.

2 THE COURT: How are you? Please be seated.

3 So this is our first conference. Has there been an  
4 arraignment already in this case?

5 MR. MAIMIN: Yes, your Honor. Last week Mr. Olmeda  
6 was arraigned by Magistrate Judge Francis and entered a plea of  
7 not guilty to all six counts.

8 THE COURT: Okay. So where do you think things are  
9 going here in terms of scheduling and next steps, et cetera?

10 MR. MAIMIN: Well, Judge, I've been speaking with  
11 defense counsel about that. We are -- I was hoping to hand her  
12 a CD of discovery right here, but I had some technical  
13 problems, so we're making that available within the next few  
14 hours. I've told defense counsel that we will supplement  
15 within one to two weeks because we're just obtaining some  
16 additional documents from the state to turn over. And then  
17 after that I think it's a question of what, if any, pretrial  
18 motions there will be.

19 Ms. Ennis has predicted that there's a decent chance  
20 this will go to trial, and there will be some fairly weighty  
21 issues regarding in limine motions that I've already started  
22 discussing with Ms. Ennis. And so I think that this may be the  
23 odd case where we'll need a little bit less time for pretrial  
24 motions than usual, because I don't see any big ones coming  
25 up -- I could be wrong, obviously -- but more time than usual

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1 on the in limine motions to make sure that those are fully  
2 briefed, and, to the extent a hearing is necessary, any hearing  
3 is had on those.

4 THE COURT: Great.

5 MR. MAIMIN: Additionally, Mr. Olmeda is facing  
6 charges out in Queens on state charges. Right now he is in the  
7 middle of a suppression motion out there, and he's due back  
8 there on October 2nd.

9 THE COURT: So how does that case impact this one in  
10 terms of trial schedule, et cetera?

11 MR. MAIMIN: Because he's in the middle of a  
12 suppression motion, and my understanding from the D.A. is that  
13 motion has been delayed largely by repeated changes of counsel,  
14 I don't believe that a trial schedule has been set, and that's  
15 pending resolution of the motion.

16 THE COURT: I see. Okay.

17 So, Ms. Ennis, what's your view?

18 MS. ENNIS: Yes. I conferred with Mr. Maimin this  
19 morning, your Honor, and he indicated that he believes he'll  
20 finish discovery in this matter in approximately two weeks. I  
21 suggested to him that defense motions, which I believe might be  
22 necessary given possible issues regarding the charges in  
23 Queens --

24 THE COURT: Sure.

25 MS. ENNIS: -- overlapping with this, that I would

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1 like four weeks for defense motions. And, therefore, we  
2 suggested a date in late October or early November for motions,  
3 for defense motions.

4 THE COURT: Well, why don't we maybe -- do you want to  
5 have a conference in between or no?

6 MS. ENNIS: That's certainly -- that's fine.

7 THE COURT: And then we could see where you are  
8 vis-a-vis the discovery. Why don't I give you a conference in  
9 say 30 days. Does that work?

10 MS. ENNIS: Yes. That works for us.

11 THE COURT: Then you can tell me --

12 MS. ENNIS: Sure.

13 THE COURT: -- exactly what motions you're planning  
14 and when.

15 MR. MAIMIN: Right now I think if we're going to do it  
16 in 30 days, I was just conferring with Mr. Cronan, we should  
17 make sure that he's available on the date, because normally at  
18 least one of us can make it, but I have a trial beginning  
19 September 30th. So I want to make sure he's available on that  
20 date.

21 THE COURT: Okay. I'll suggest a date, then you'll  
22 tell me if it works.

23 MS. ENNIS: Thank you.

24 THE COURT: Counsel and Ms. Ennis, is October 3rd a  
25 good date for you?

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1 MS. ENNIS: I believe he's going to Queens on  
2 October 2nd to resume that suppression hearing, so there might  
3 be a conflict there. Perhaps the following week would be good  
4 if we could work something out.

5 THE COURT: How about Wednesday, the 9th of October,  
6 at 2:00 p.m?

7 MS. ENNIS: That's fine with the defense, your Honor.

8 MR. MAIMIN: That's fine for the government, your  
9 Honor.

10 THE COURT: Ms. Ennis, we'll just mark it as a status  
11 conference right now, and then you'll tell me on that date  
12 what, if any, motions, and maybe we'll talk in advance and  
13 figure out a schedule that's mutually satisfactory.

14 MS. ENNIS: Yes. Thank you, your Honor.

15 THE COURT: So is Mr. Olmeda currently held in state  
16 custody or what's his status?

17 MR. MAIMIN: He's presently here on a writ. I've  
18 spoken to the Marshals, as well as to Queens D.A., and I think  
19 right now it looks like the preference of the various holding  
20 authorities is that he remain -- although he's technically in  
21 state custody because of the writ, that he remain in the  
22 temporary custody of the Marshals and he'll be writted to state  
23 court as necessary.

24 THE COURT: For his suppression hearing or whatever.

25 MR. MAIMIN: That's right. But he's being held

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1 without bail there.

2 THE COURT: Okay.

3 MR. MAIMIN: And, accordingly, Ms. Ennis did not seek  
4 bail here, reserving her rights, of course, should the subject  
5 of bail arise.

6 THE COURT: So do we have an application or need for  
7 one for speedy trial exclusion to October 9, 2013?

8 MR. MAIMIN: Yes, your Honor. The adjournment here is  
9 done in order to allow Ms. Ennis and her client to look over  
10 discovery and also, as I understand from Ms. Ennis, to consider  
11 what I think she's hoping may be fruitful purely legal motions  
12 dealing with the confluence of this case versus the case over  
13 there. So in order to allow for the defense to review  
14 discovery, consider and begin preparing motions, as well as  
15 preparing for the significant possibility of a trial, the  
16 government believes that the adjournment here is -- that the  
17 interests of justice in granting the adjournment here outweigh  
18 the interests of the defendant and the public in a speedy trial  
19 and, therefore, move for an exclusion of time pursuant to the  
20 Speedy Trial Act.

21 THE COURT: Okay. I'm going to find under 18 United  
22 States Code, Section 3161, that the request for adjournment  
23 joined in by both sides is appropriate and warrants exclusion  
24 of the adjourned time from speedy trial calculations.

25 I further find that the exclusion is designed to

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1 prevent any possible miscarriage of justice, to facilitate  
2 these proceedings, including possible motion practice and  
3 discovery, and to guarantee effective representation of and  
4 preparation by counsel for both parties. And thus the need for  
5 exclusion and the ends of justice outweigh the interest of the  
6 public and the defendant in a speedy trial pursuant to 18  
7 U.S.C. Section 3161(h)(7)(a) and (b).

8 So unless there is anything further, I'll see you all  
9 on October 9, 2013 at 2:00 p.m.

10 MR. MAIMIN: Your Honor, may I have one moment?

11 Nothing further, your Honor.

12 THE COURT: Okay.

13 MS. ENNIS: Thank you, your Honor.

14 THE COURT: Nice to see you all.

15 MR. MAIMIN: Good to see you too, Judge.

16 (Adjourned to October 9, 2013 at 2:00 p.m.)  
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